

ORIGINAL

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 RICHARD W. WIEKMAN
 CLERK, U.S. DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA

JCS

COPYTELE, INC., a Delaware
 Corporation,

Plaintiff,

v.

AU OPTRONICS CORPORATION, a
 Taiwanese corporation; AU OPTRONICS
 CORPORATION AMERICA, a California
 corporation; E INK HOLDINGS, INC., a
 Taiwanese corporation; and E INK
 CORPORATION, a Delaware corporation,

Defendants.

C 13 0380
 Civil Action No.:

COMPLAINT FOR DAMAGES

- (1) Attempted Monopolization
- (2) Conspiracy to Monopolize
- (3) Breach of Contract
- (4) Breach of the Implied Covenant of Good Faith and Fair Dealing
- (5) Fraudulent Inducement
- (6) Unjust Enrichment
- (7) Unfair Business Practices
- (8) Accounting
- (9) Aiding and Abetting Fraudulent Inducement
- (10) Civil Conspiracy
- (11) Contract Reformation
- (12) Negligent Misrepresentation
- (13) Declaratory Judgment

JURY TRIAL DEMANDED

PUBLIC REDACTED VERSION

1 Plaintiff CopyTele, Inc. (hereafter "Plaintiff" or "CopyTele") brings this action for
 2 damages and injunctive relief under federal antitrust law and California law against defendants
 3 (hereafter jointly referred to as "Defendants") AU Optronics Corporation ("AUOC") and AU
 4 Optronics Corporation America ("AUOCA") (jointly hereafter referred to as "AUO"), and E Ink
 5 Holdings, Inc. ("E Ink Holdings") and E Ink Corporation ("E Ink Corp.") (jointly referred to as
 6 "E Ink"), demands trial by jury, and complains and alleges as follows:

7 INTRODUCTION

8 1. This case arises from AUO's breach of contract and fraud, and E Ink's aiding,
 9 abetting, and conspiracy to effectuate AUO's fraud, all in connection with the attempted
 10 misappropriation of extremely valuable patented technologies developed and owned by
 11 CopyTele.

12 2. In May of 2011, AUO fraudulently induced CopyTele to enter into two licensing
 13 agreements by purporting to agree to jointly develop two groups of products incorporating
 14 CopyTele's patented display technologies. The first group of products was to be based upon
 15 CopyTele's patented electrophoretic display technologies (the "EPD Technologies" and as jointly
 16 developed, the "EPD Products"). The second group of products was to be based upon
 17 CopyTele's patented nano field emission display technologies (the "nFED Technologies" and as
 18 jointly developed, the "nFED Products"). However, as quickly became apparent, AUO never had
 19 any intention of jointly developing the EPD Products or the nFED Products, and instead used the
 20 agreements to fraudulently obtain and transfer licenses to CopyTele's patented technologies.

21 3. On May 27, 2011, CopyTele and AUO entered into an agreement pertaining to the
 22 EPD Products (the "EPD Agreement"), and also entered into an agreement pertaining to the
 23 nFED Products (the "nFED Agreement") (the EPD Agreement and nFED Agreement are jointly
 24 referred to as "the Agreements"). Both Agreements required the parties to use their "best efforts"
 25 in connection with the joint development of the EPD Products and the nFED Products,
 26 respectively, and also included licenses to CopyTele's patented EPD Technologies, and
 27 CopyTele's patented nFED Technologies, respectively, to be used in connection with the joint
 28 development of the respective products. Both Agreements called for *de minimis* up-front initial

1 payments from AUO to CopyTele, significant milestone payments in connection with the joint
2 development of the products, and considerable ongoing royalties to be paid by AUO to CopyTele
3 from sales of the EPD Products and the nFED Products. Due to AUO's significant financial
4 resources, and based upon assurances from AUO to CopyTele that AUO would abate any
5 infringement of CopyTele's electrophoretic patents, AUO sought and received the exclusive right
6 to enforce CopyTele's valuable electrophoretic patents as part of the EPD Agreement.

7 4. As specified by numerous emails between high ranking officials of AUO and
8 CopyTele, and confirmed by recorded minutes of several meetings between the parties, a primary
9 goal of the EPD Agreement was for CopyTele and AUO to jointly develop EPD Products that
10 would successfully compete with electrophoretic displays manufactured by E Ink, and used in
11 eReader products sold under brand names such as "Kindle" and "Nook."

12 5. After seven months of development work on the nFED Products by CopyTele,
13 AUO was required to manufacture substrates that were needed to further develop and test the
14 nFED Products. Instead of using its "best efforts" to manufacture the substrates as required by
15 the nFED Agreement, AUO did nothing for a period of four months. Finally, in April of 2012,
16 AUO informed CopyTele that AUO had unilaterally cancelled all funding in connection with the
17 joint development of the nFED Products, effective immediately. This budget cancellation
18 constituted a material breach of the nFED Agreement by AUO.

19 6. After over 15 months of stalling and actively blocking any material progress of the
20 joint development of the EPD Products, as more fully described below, in August of 2012, AUO
21 announced that it was selling its electrophoretic display business and subsidiary SiPix Imaging,
22 Inc. ("SiPix") to E Ink for \$50 million.

23 7. As was widely reported by the media, the primary, if not the sole purpose, of the
24 SiPix acquisition was for E Ink to attempt to monopolize the electrophoretic display market by
25 aggregating all electrophoretic technology patents. Shortly after the announced sale of SiPix to E
26 Ink, and after receiving written notice from CopyTele of CopyTele's intent to terminate the EPD
27 Agreement due to AUO's repeated failures to adhere to its "best efforts" obligations to jointly
28 develop the EPD Products, with no notice to CopyTele, AUO surreptitiously purported to

1 sublicense CopyTele's patented EPD Technologies to E Ink, again breaching AUO's obligations
2 to CopyTele.

3 8. CopyTele alleges that AUO never intended to jointly develop the nFED Products
4 or the EPD Products, and that AUO's true intention was to misappropriate CopyTele's valuable
5 EPD Technologies and nFED Technologies. As a result, AUO's licenses to CopyTele's
6 technologies were fraudulently obtained.

7 9. To make matters worse, CopyTele also alleges that AUO and E Ink conspired to
8 steal CopyTele's patented technologies, and to financially damage CopyTele such that (i)
9 CopyTele would be unable to enforce its rights under the EPD Agreement and the nFED
10 Agreement, and (ii) CopyTele would be unable to develop products with other parties that could
11 compete with products sold by AUO and E Ink.

12 10. Significant evidence—including direct statements by senior AUO officials to the
13 effect that AUO intended to “screw” CopyTele in reprisal for alleged unfair treatment of AUO by
14 large American companies such as Apple—demonstrates that AUO never intended to jointly
15 develop products with CopyTele, and instead fraudulently induced CopyTele into licensing
16 CopyTele's patents for significantly less than their market value. Had the joint development
17 programs proceeded as anticipated, CopyTele would have earned significant royalties from the
18 sale of jointly developed products. Instead, AUO obtained enforcement and sublicensing rights to
19 CopyTele's valuable patents, for an initial *de minimis* upfront payment representing only a
20 fraction of the actual value of the licenses.

21 11. E Ink's motive to obtain licenses to CopyTele's electrophoretic display patents is
22 clear: E Ink's electrophoretic display products—which comprise the vast majority of E Ink's
23 product offerings—infringe CopyTele's electrophoretic display patents, which cover various
24 foundational aspects of electrophoretic display technology. In fact, Barrett Comisky, one of the
25 co-founders of E Ink, purchased one of CopyTele's electrophoretic devices in December of 1999.
26 At a subsequent trade show, an E Ink employee acknowledged to CopyTele employees that E Ink
27 had reverse-engineered CopyTele's device, and also stated that E Ink expected CopyTele to
28 eventually pursue patent infringement claims against E Ink.

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1 gas, resulting in thin, flat panel displays with a bright, sharp, high contrast color image. Displays
 2 incorporating CopyTele's nFED Technologies would be less expensive to manufacture, use less
 3 power, and provide superior picture quality to traditional LCD and LED displays commonly used
 4 for computers, tablets, and televisions. The potential market for products developed using
 5 CopyTele's nFED Technologies is large: analysts estimate that in 2012, global sales of LCD
 6 displays for televisions were expected to reach 240 million units, and LCD displays for tablets
 7 were expected to reach 119 million units.

8 25. Despite its small size and relatively modest product offerings, CopyTele has been
 9 acknowledged as an "initial owne[r] of e-paper display technology" and a "knowledge diffuse[r]
 10 of the e-paper display technology." See Jang, Show-ling. et al., *Emerging firms in an emerging*
 11 *field: an analysis of patent citations in electronic-paper display technology*, 89 SCIENTOMETRICS
 12 1, 259-272 (2011).

13 26. AUO is one of the world's largest manufacturers of flat panel LCD displays for
 14 televisions, computers, and tablets, including the Apple iPads.

15 27. AUO has a history of fraudulent, anti-competitive, and illegal conduct. AUO's
 16 former president and vice-president were recently sentenced to serve three years in United States
 17 Federal Prison for AUO's role in "the most serious price-fixing cartel ever prosecuted by the
 18 United States." See Kendall, Brent, *U.S. Seeks \$1 Billion Price-Fixing Fine for AU Optronics*,
 19 Wall St. J., Sept. 12, 2012, *available at*
 20 <http://online.wsj.com/article/SB10000872396390443884104577647470003233182.html>. AUO
 21 was ordered to pay a record \$500 million fine, and agreed to pay an additional \$199.5 million to
 22 settle two class action lawsuits, all emanating from antitrust, anti-competitive activities engaged
 23 in by AUO.

24 28. E Ink is the dominant, worldwide manufacturer and supplier of electrophoretic
 25 displays, including those used in eReaders sold under the "Kindle," and "Nook" brand names. E
 26 Ink's electrophoretic displays include the "Pearl," "SURF," and "Vizplex" displays.

27 29. In September 2010, AUO approached CopyTele about purchasing a subset of
 28 CopyTele's EPD Patents for \$1.5 million. CopyTele declined AUO's offer, but proposed that

1 CopyTele and AUO jointly develop the EPD Products. CopyTele agreed to exclusively license
2 its EPD Patents to AUO only in connection with such joint development efforts. CopyTele
3 emphasized the paramount importance of the CopyTele/AUO joint development project as part of
4 the arrangement with AUO, including future royalties to be paid by AUO to CopyTele from the
5 sale of jointly developed EPD Products. Without the joint development commitment from AUO,
6 CopyTele was unwilling to license or sell any of its EPD Patents to AUO.

7 30. At the same time that CopyTele and AUO were discussing the joint development
8 of EPD Products, CopyTele and AUO entered into discussions regarding the joint development of
9 nFED Products, incorporating CopyTele's patented nFED Technologies, including a license to
10 CopyTele's nFED Patents in connection with such joint development. CopyTele had previously
11 licensed certain rights to its nFED technologies to Videocon Industries, Ltd., and thus any
12 CopyTele nFED license to AUO would be non-exclusive. Again, CopyTele's and AUO's joint
13 development efforts were to be a material part of any nFED arrangement between CopyTele and
14 AUO, and without the joint development commitment from AUO, there would be no license of
15 CopyTele's nFED Patents to AUO.

16 31. In consideration for the licenses to CopyTele's EPD Technologies and CopyTele's
17 nFED Technologies, AUO was to pay CopyTele a *de minimis* initial payment, considerable
18 progress payments, and significant running royalties that were tied to sales of the EPD Products
19 and the nFED Products. The initial payments alone were significantly less than CopyTele would
20 have demanded for licenses to the EPD Patents and the nFED Patents, and significantly less than
21 market rates for equivalent licenses.

22 32. During the negotiations related to the agreements for the EPD and nFED Products,
23 CopyTele made clear the importance of AUO's joint development responsibilities and insisted
24 that AUO adhere to the highest "best efforts" standard with respect to its joint development
25 obligations.

26 33. The EPD Agreement and the nFED Agreement are attached hereto as Exhibits A
27 and B, respectively. Both Agreements contained "joint development" obligations that required
28 both parties to "make their best efforts to jointly develop" products covered by the licenses [REDACTED]

Section 6.12 of the EPD Agreement states:

Licensor and Licensee will discuss and conclude a joint development agreement for the Subject EPD Products as soon as practicable after the Effective Date hereof and will make their best efforts to jointly develop the Subject EPD Products

See Exh. A (emphasis added). Section 5.12 of the nFED Agreement states:

Licensor and Licensee will discuss and conclude a joint development agreement for the Subject Nano Display Products as soon as practicable after the Effective Date hereof and will make their best efforts to jointly develop the Subject Nano Display Products

See Exh. B (emphasis added).

34. However, AUO did not come close to fulfilling its “best efforts” obligations in connection with the joint development of either the EPD Products or the nFED Products. Instead AUO devoted only minimal resources to the joint development of the EPD Products and nFED Products, did not fulfill its most basic joint development responsibilities, and impeded CopyTele’s progress in both joint development programs.

35. On October 5, 2012, due to AUO’s material breaches of both the EPD Agreement and the nFED Agreement, CopyTele notified AUO of CopyTele’s intent to terminate both Agreements.

36. Between October 5, 2012 and November 2, 2012, AUO declined CopyTele’s invitations to meet with AUO for the purposes of discussing the possibility of AUO curing AUO’s breaches of the EPD Agreement and the nFED Agreement, and attempting to amicably resolve all outstanding issues with respect to the Agreements.

37. On January 28, 2013, due to AUO’s continuing material breaches, CopyTele terminated and alternatively rescinded both the nFED Agreement and the EPD Agreement. A true and correct copy of the notice is attached to this Complaint as Exhibit C.

AUO BREACHED THE nFED AGREEMENT

38. On April 24, 2012, with no advance notice to or consultation with CopyTele, James Chen of AUO's "Strategy Office" notified CopyTele that AUO unilaterally canceled the entire budget in connection with the joint development of the nFED Products, effective immediately. In that notice, Mr. Chen requested that CopyTele "discuss the closure of the nFED Agreement." AUO's decision to terminate all funding for the nFED joint development project was a violation of the "best efforts" obligation agreed to by AUO in the nFED Agreement, and constituted a material breach of the nFED Agreement by AUO, giving rise to CopyTele's right to terminate the nFED Agreement in its entirety.

39. AUO's unilateral decision to cancel the nFED Product development budget in its entirety, and for CopyTele immediately to halt all development work, resulted in significant financial hardship to CopyTele. CopyTele incurred significant out of pocket costs and expenses in reliance on AUO's promise to use its "best efforts" in connection the joint development of the nFED products. For example, CopyTele paid for both supplemental research by an outside consulting firm, and for specific equipment and supplies that were necessary for CopyTele's responsibilities under the nFED Agreement. CopyTele also devoted significant internal staff and resources in connection with its joint development responsibilities. In addition to these expenses, AUO's material breach of the nFED Agreement made it impossible for CopyTele to qualify for \$ [REDACTED] of progress payments which AUO agreed to pay CopyTele, and significant running royalties that were to be paid by AUO to CopyTele in connection with the sale of nFED Products. The initial nFED Product that AUO and CopyTele agreed to jointly develop was a tablet-sized device. Of the 119 million tablets expected to be sold in 2012, a substantial portion of the tablets were iPads for which AUO manufactured the displays for Apple, illustrating the large potential market for such a jointly developed product. When considering the combination of CopyTele's out of pocket costs and expenses, progress payments to be paid by AUO to CopyTele, and lost royalties to be paid by AUO to CopyTele in connection with jointly developed nFED Products, CopyTele's damages in connection with AUO's breaches of the nFED Agreement potentially amount to several hundred million dollars.

AUO BREACHED THE EPD AGREEMENT

40. Despite AUO's "best efforts" obligations under the EPD Agreement, AUO failed to devote appropriate personnel and resources to the joint development of the EPD Products. On information and belief, AUO significantly understaffed the projects by devoting at most two inexperienced employees to the EPD Product joint development project at any one time, far fewer than was necessary to make reasonable progress on the project, and as was required by AUO's "best efforts" obligations. In fact, AUO appeared to implement a "revolving door" staffing strategy with respect to both the EPD Product and nFED Product joint development programs. For example, with respect to the EPD Product joint development program, CopyTele was asked to work with three different supervising managers and five different working scientists within one seven-month span. As soon as CopyTele would begin to make progress with a supervising manager or scientist from AUO, AUO would reassign those people and replace them with personnel that were unfamiliar with the joint development program and in many cases, completely unfamiliar with the technology to be developed.

41. In addition to not fulfilling its own joint development obligations, AUO actively prohibited CopyTele from completing CopyTele's work on the EPD Products. As part of its joint development efforts, CopyTele required certain software code from AUO to drive AUO's K1900 EPD timing controller, a computer controller that was to be used to test suspension fluids developed by CopyTele. AUO refused to provide the necessary software code, on the grounds that SiPix, AUO's own subsidiary, deemed the code to be proprietary. Thus, AUO took the position that its wholly owned-subsidiary—essentially AUO itself—would not allow it to provide essential technical information to CopyTele that was required for the progress of the EPD joint development program.

42. AUO's refusal to supply the necessary software code for the K1900 EPD timing controller constituted a violation of AUO's "best efforts" obligations, and a material breach of the EPD Agreement, giving rise to CopyTele's right to terminate the EPD Agreement in its entirety. Without the software code, CopyTele was forced to incur significant out-of-pocket costs for the development of its own software, which was needed for testing purposes. In addition, these

1 actions prevented CopyTele from reaching the milestones for which \$ [REDACTED] would have been
2 paid by AUO to CopyTele.

3 43. AUO additionally failed to timely supply test cells needed by CopyTele for its
4 joint development work under the EPD Agreement. Without the timely delivery of the test cells,
5 AUO also prevented CopyTele from progressing in its scheduled development work.

6 44. As a last minute, wholly ineffectual attempt to excuse their behavior once
7 CopyTele notified AUO of CopyTele's intent to terminate the EPD Agreement, AUO claimed
8 that CopyTele had not developed the necessary suspension fluids for which the test cells were to
9 be used. However, contrary to AUO's assertions, CopyTele had several suspension fluids ready
10 for testing before the parties even entered into the EPD Agreement. Dr. Fan Luo, of AUO,
11 personally reviewed these suspensions during a visit to CopyTele's facilities in November of
12 2010. These suspensions were available to be used with the test cells, had AUO provided them to
13 CopyTele in a timely manner. Finally, after many requests by CopyTele, and an embarrassing
14 acknowledgement by Dr. Fan Luo during a visit to CopyTele's offices in July of 2012 that AUO
15 had not lived up to its obligations under the EPD Agreement, the test cells were sent to CopyTele
16 in August of 2012 following an inexcusable 12 month delay.

17 45. Taken separately, the unreasonable delays in connection with the test cells, and the
18 outright refusal of AUO to provide CopyTele with the necessary software code to be used in
19 conjunction with the test cells, are each significant violations of AUO's "best efforts" obligations
20 under the EPD Agreement and constitute material breaches resulting in CopyTele's right to
21 terminate the EPD Agreement. Taken together, such actions overwhelmingly support CopyTele's
22 right to terminate the EPD Agreement in its entirety, and to seek damages in connection
23 therewith.

24 46. It has been estimated that over 35 million eReader EPD Products were sold in
25 2012 worldwide. When considering the combination of CopyTele's out-of-pocket costs and
26 expenses in connection with the development of software that was to be provided by AUO, the
27 \$ [REDACTED] in progress payments that CopyTele did not receive due to AUO's delays in delivering
28 the test cells, and the lost royalties to be paid by AUO to CopyTele in connection with initial EPD

1 Products to be jointly developed by CopyTele and AUO, CopyTele's damages in connection with
2 AUO's breaches of the EPD Agreement potentially amount to several hundred million dollars.

3 **AUO FRAUDULENTLY INDUCED COPYTELE INTO LICENSING ITS EPD**
4 **AND nFED PATENTS**

5 47. On information and belief, AUO never intended to jointly develop the nFED
6 Products with CopyTele, and instead sought to use the joint development programs as a ruse to
7 obtain licenses to CopyTele's nFED Patents for significantly less than CopyTele would have
8 otherwise been willing to license them.

9 48. On information and belief, AUO induced CopyTele to enter the Agreements by
10 making misrepresentations of fact and/or by making promises without any reasonable grounds to
11 believe them. AUO led CopyTele to believe, through misrepresentations, that AUO was
12 committed to jointly developing products under both Agreements when AUO had no reasonable
13 grounds to believe that it would perform its contractual obligations. These misrepresentations
14 include, without limitation: (1) the "best efforts" clauses included in both multiple drafts of the
15 Agreements and the final versions; (2) AUO's repeated written and oral statements that it
16 intended to jointly develop royalty-bearing products with CopyTele, including but not limited to:

17 i. During an August 12, 2010 meeting with CopyTele management, AUO
18 gave a presentation regarding AUO's intent to work jointly with CopyTele to improve AUO's
19 existing display technology.

20 ii. On September 24, 2010, C.W. Hao, AUO's Marketing Director, emailed
21 Denis Krusos acknowledging AUO's obligation to "co-work" with CopyTele to develop nFED
22 Products as an "assumption" and a "constraint" of the patent licensing agreement that the
23 companies were negotiating.

24 iii. During a November 30, 2010 meeting with CopyTele management, AUO
25 stated that CopyTele would be a source of research and development to AUO, not just a source of
26 licensing technology.
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1 iv. During a December 1, 2010 meeting with CopyTele management, AUO
2 stated that AUO and CopyTele would work together as a team to prevent E Ink from infringing
3 on CopyTele's patents, possibly through litigation.

4 v. On January 10, 2011, Hank M. Liu, Chief General Counsel at AUO stated
5 in an email to Denis Krusos that AUO intends to "invest a lot of resources in a joint development
6 project."

7 vi. On March 3, 2011, Eric Lo, of AUO's Strategic Business Development
8 office stated in an email to Anthony Campisi that AUO was seriously evaluating CopyTele's
9 technology for its mass production potential.

10 vii. During a meeting on November 29, 2010, CW Hao, AUO's Marketing
11 Director, stated that AUO could beat E Ink on manufacturing costs. Mr. Hao also stated that with
12 CopyTele's improved electrophoretic technology, the fruits of the joint development program
13 would replace E Ink in the eReader market.

14 viii. Eric Lo, of AUO's Strategic Business Development office, claimed that
15 there was no way E Ink could compete with AUO on price with CopyTele's electrophoretic
16 technology, and that AUO and CopyTele could together accordingly replace E Ink as the provider
17 of electrophoretic displays to Amazon.

18 ix. At a meeting on February 19, 2011, Paul Peng, AUO's President, reported
19 that AUO's EPD Group was excited about the electrophoretic display wall structure that
20 CopyTele proposed for the joint development project.

21 49. AUO's continual delays, insufficient staffing, and failures to provide CopyTele
22 with the software and substrates necessary for EPD Product testing demonstrate that despite
23 periodic statements to the contrary, AUO had no intention of using "best efforts" to jointly
24 develop the EPD Products with CopyTele. Instead, AUO used the EPD Agreement as an excuse
25 to obtain a license to the EPD Patents, which AUO intended to pass on to E Ink, in conjunction
26 with and in exchange for the \$50 million paid by E Ink to AUO in connection with the sale of
27 SiPix to E Ink.

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1 50. AUO's outright cancellation of the nFED Product development budget only a few
2 months into the program demonstrates that AUO had no intention of using "best efforts" to jointly
3 develop the nFED Products with CopyTele. Instead, AUO used the joint development program
4 as an excuse to ensure that CopyTele would not develop nFED Products that would compete with
5 successful tablet products already manufactured and sold by AUO, and to obtain a license to
6 CopyTele's valuable nFED Patents.

7 51. On information and belief, AUO's scheme to defraud CopyTele was predicated, in
8 part, upon the assumption that because CopyTele is a small company, and the EPD Agreement
9 and the nFED Agreement were the only potential sources of income for CopyTele, CopyTele
10 would be unwilling and unable to "fight back" against a billion-dollar industry behemoth like
11 AUO once AUO consummated its fraud. Indeed, AUO's fraud and breaches of the Agreements
12 have caused significant financial hardships to CopyTele, resulting in the layoff of many
13 employees, a decrease in its stock price, and the near bankruptcy and liquidation of the company.

14 52. On information and belief, the license payments to CopyTele due under the nFED
15 Agreement are far below the typical payments agreed to and made by AUO as part of other
16 similar license agreements, thereby demonstrating the success of AUO's fraudulent scheme.

17 53. Absent the agreement to jointly develop nFED Products, CopyTele would have
18 demanded significant license fees from AUO in return for a license to CopyTele's nFED Patents.

19 **AUO AND E INK CONSPIRED TO FRAUDULENTLY OBTAIN LICENSES TO**
20 **COPYTELE'S EPD PATENTS**

21 54. On August 5, 2012, AUO publicly announced that its wholly-owned
22 electrophoretic display company, SiPix, was to be sold to E Ink, the world's largest—and after
23 the acquisition of SiPix, essentially the only—manufacturer of electrophoretic displays. The
24 purchase price was approximately \$50 million.

25 55. Thus, only 15 months after entering into the EPD Agreement with CopyTele,
26 through which AUO and CopyTele agreed to jointly develop EPD Products that would have
27 competed with products sold by E Ink, AUO agreed to sell its electrophoretic display subsidiary
28 to E Ink for \$50 million.

1 56. On information and belief, at the time that AUO entered into the EPD Agreement
2 with CopyTele, AUO knew or had reason to know that AUO might sell SiPix to E Ink, that AUO
3 intentionally concealed the potential sale from CopyTele, and that AUO never intended to jointly
4 develop EPD Products with CopyTele.

5 57. Furthermore, on information and belief, at the time that AUO entered into the EPD
6 Agreement with CopyTele, AUO sought sublicensing rights to CopyTele's EPD Patents for the
7 undisclosed purpose of attempting to sublicense such rights in connection with the sale of SiPix to
8 E Ink, the very company with which CopyTele and AUO were supposed to compete, as opposed
9 to AUO's stated purpose of sublicensing to suppliers that were to assist in the joint development
10 of the EPD Products. On information and belief, AUO concealed its true intentions and
11 intentionally misled CopyTele.

12 58. E Ink publicly stated that a primary purpose of acquiring SiPix was to acquire
13 SiPix's intellectual property in order to immunize E Ink from patent infringement actions, thereby
14 effectively creating a total monopoly on electrophoretic display products. As reported in the
15 press, "E Ink said as both companies own many [electrophoretic display] patents, it will be
16 unnecessary after the acquisition for E Ink to worry about possible patent infringement disputes
17 involving each other's technology." *See E Ink to acquire AUO's e-paper display supplier*, THE
18 CHINA POST, Aug. 5, 2012, available at [https://www.chinapost.com.tw/taiwan/national/national-](https://www.chinapost.com.tw/taiwan/national/national-news/2012/08/05/349925/E-Ink.htm)
19 [news/2012/08/05/349925/E-Ink.htm](https://www.chinapost.com.tw/taiwan/national/national-news/2012/08/05/349925/E-Ink.htm).

20 59. Press reports have similarly stated that the purpose of the SiPix acquisition was
21 likely the anticompetitive goal of avoiding price wars rather than obtaining any manufacturing
22 capacity from SiPix. As stated in one press report:

23 [E Ink's] motivation of the acquisition is to remove the only EPD
24 competitor to avoid price-cut wars rather than to obtain SiPix's
25 production capacity, according to industry sources in Taiwan. This
26 is because [E Ink]'s production capacity has been in excess of
27 ordered volumes in so far in 2012, the company actually does not
28 need SiPix's production capacity, the sources pointed out. Instead,
[E Ink's] will become the leading vendor for EPD e-paper without
any competitor, equivalent to the only choice for the product, the
sources explained.

1 See Huang, Sammi & Hwang, Adam, *E Ink acquisition of SiPix is for prevention of price wars*
2 *instead of obtaining capacity*, DIGITIMES, Aug. 21, 2012, available at
3 <http://www.digitimes.com/news/a20120820PD223.html>.

4 60. On information and belief, CopyTele alleges that E Ink intended to obtain rights to
5 the EPD Patents as part of E Ink's overall scheme to monopolize the electrophoretic display
6 market and immunize itself from patent infringement lawsuits by patent owners such as
7 CopyTele.

8 61. Despite Defendants receiving notice on October 5, 2012 of CopyTele's intention
9 to terminate the EPD Agreement, including any AUO sublicensing rights, and, on information
10 and belief, fearing that CopyTele had indeed discovered the fraud perpetrated by AUO and E Ink,
11 AUO and E Ink jointly publicly announced on October 12, 2012 that they had "agreed to cross
12 license specified patents owned by each party." See AUO press release dated October 12, 2012,
13 available at <http://auo.com/?sn=107&lang=en-US&c=&n=1452>. On information and belief, the
14 cross-licensing agreement included a sublicense from AUO to E Ink to CopyTele's EPD Patents.

15 62. A week later, on October 18, 2012, AUO wrote to CopyTele that with respect to
16 the EPD Patents, "as the exclusive licensee, AUO has been exercising its rights as allowed under
17 the agreement including entering into a patent cross license agreement with E Ink."

18 63. On information and belief, AUO and E Ink conspired to effectuate a fraudulent
19 sublicense of CopyTele's EPD Patent rights to E Ink, by inducing CopyTele to grant AUO
20 sublicensing rights in connection with the EPD Products to be jointly developed by CopyTele and
21 AUO, and by effectuating such sublicense after being notified of CopyTele's intention to
22 terminate the EPD Agreement.

23 64. At the time that CopyTele entered into the EPD Agreement, CopyTele never
24 envisioned that AUO would sublicense the EPD Patents to E Ink, and CopyTele would never
25 have agreed to such sublicense, particularly with CopyTele receiving nothing in return.

26 65. On information and belief, E Ink was aware of AUO's intentions to fraudulently
27 induce CopyTele to enter into the EPD Agreement, and aided and abetted AUO's fraudulent
28

1 inducement by providing material support and incentive to AUO to commit fraud by offering to
2 purchase SiPix in exchange for, *inter alia*, sublicenses to CopyTele's EPD Patents.

3 66. To make matters worse, on information and belief, AUO and E Ink further
4 perpetrated their fraud in connection with CopyTele's EPD Patents by attempting to protect and
5 license infringing eReader devices sold by E Ink over the past several years. At the time that
6 CopyTele entered into the EPD Agreement with AUO, CopyTele granted AUO exclusive
7 enforcement rights to the EPD Patents with the understanding and intent that because AUO was a
8 multi-billion dollar company with extensive resources, AUO would pursue all infringers of
9 CopyTele's EPD Patents. Instead of enforcing CopyTele's EPD Patent rights against E Ink, AUO
10 attempted to secretly sublicense the EPD Patents to E Ink, with no notice to CopyTele and with
11 CopyTele receiving no consideration.

12 67. Direct statements by AUO's top officials attest to AUO's fraudulent intent. While
13 visiting CopyTele's facilities in New York in April 2012, after a year of unreasonable delays and
14 refusals to cooperate by AUO, Dr. Fan Luo stated to CopyTele's Chairman, Lewis Titterton, that
15 Apple, Inc. and other large American companies had been "screwing" AUO for years by taking
16 AUO's intellectual property without compensation. Mr. Luo then made a statement, directly to
17 Mr. Titterton, to the following effect: "and now AUO is going to do the same to you." On
18 information and belief, Dr. Luo was referring to AUO's—by then largely executed—scheme to
19 fraudulently induce CopyTele into licensing its patents to AUO in exchange for the false promise
20 of potential royalties from jointly developed products.

21 **ANTITRUST ALLEGATIONS**

22 **I. Relevant Product Market: Electrophoretic Display Technologies For eReaders.**

23 68. Electrophoretic displays, which are used in consumer devices commonly known as
24 eReaders, are low voltage, high resolution, black-and-white displays that can be easily viewed in
25 a variety of lighting conditions including bright sunlight. In the most common implementation of
26 an electrophoretic display, millions of white titanium dioxide and carbon black particles are
27 suspended in a clear solution of hydrocarbon oil. These particles usually have a diameter of less
28 than a micrometer (1/1000 of a millimeter). Charging agents are added to give the titanium

dioxide and carbon black particles opposite charges. The particles are suspended in the oil between two parallel conductive plates about 10 to 100 micrometers apart. The parallel conductive plates connect to circuitry that allows external signals to manipulate the electric charge at precise points on the display. By manipulating the charge at these precise points, the black and white particles will move in opposite directions and either migrate to the viewing surface or the back surface of the display. This effect is called “electrophoresis,” after which the display is named. At the surface, the white particles scatter light appearing bright white, while black particles at the surface make that point black. By manipulating the charge at precise points over the entire display an image is created. Using color filters allows the display of the full visual spectrum.

69. Demand for electrophoretic displays is highly inelastic. For example, for eReader devices such as Amazon’s “Kindle” and Barnes & Noble’s “Nook,” there are no close substitutes.

II. The Development, Manufacture, and Sale of Electrophoretic Displays Is A Line Of Commerce In A Relevant Product Market.

70. E Ink is the leading electrophoretic display manufacturer in the world. Entry into the development, manufacture, and sale of electrophoretic displays is difficult, time-consuming, and costly. The technology is highly protected by patents, including CopyTele’s EPD Patents. A facility to manufacture electrophoretic displays costs in excess of \$1 billion and can take up to two years to design and build.

III. E Ink’s Monopoly Power in the Relevant Market.

71. E Ink is one of the only electrophoretic display manufacturers in the world. As of 2012, E Ink accounted for 90 percent of the electrophoretic display sales in the world. Since E Ink’s acquisition of SiPix, E Ink’s share of the relevant market has increased to almost 100 percent, and therefore E Ink has monopoly power in the market for electrophoretic displays. On information and belief, through E Ink’s aiding and abetting and conspiring with AUO to fraudulently obtain licenses to CopyTele’s EPD Patents, E Ink now purports to have sublicenses to the patents that are fundamental to electrophoretic display technology.

72. To manufacture and sell electrophoretic displays, an entrant needs licenses to CopyTele's EPD Patents. On information and belief, through their fraudulent conspiracy directed at CopyTele, E Ink and AUO purport to have obtained control over critical patents for the design, manufacture, and building of electrophoretic displays.

IV. **E Ink's Monopoly Position Strengthened With The Acquisition Of Licenses To CopyTele's EPD Patents.**

73. E Ink publicly stated that a primary purpose of acquiring SiPix was to acquire SiPix's intellectual property, in order to immunize E Ink from patent infringement actions, thereby effectively creating a total monopoly on electrophoretic displays products; as reported in the press, "E Ink said as both companies own many [electrophoretic display] patents, it will be unnecessary after the acquisition for E Ink to worry about possible patent infringement disputes involving each other's technology." *See E Ink to acquire AUO's e-paper display supplier*, THE CHINA POST, Aug. 5, 2012, available at <https://www.chinapost.com.tw/taiwan/national/national-news/2012/08/05/349925/E-Ink.htm>.

74. Press reports have stated that the purpose of the SiPix acquisition was likely the anticompetitive goal of avoiding price wars rather than obtaining any manufacturing capacity from SiPix, and have noted that as a result of the acquisition, E Ink has "become the leading vendor for EPD e-paper without any competitor, equivalent to the only choice for the product:"

[E Ink's] motivation of the acquisition is to remove the only EPD competitor to avoid price-cut wars rather than to obtain SiPix's production capacity, according to industry sources in Taiwan. This is because [E Ink]'s production capacity has been in excess of ordered volumes in so far in 2012, the company actually does not need SiPix's production capacity, the sources pointed out. Instead, [E Ink's] will become the leading vendor for EPD e-paper without any competitor, equivalent to the only choice for the product, the sources explained.

See Huang, Sammi & Hwang, Adam, E Ink acquisition of SiPix is for prevention of price wars instead of obtaining capacity, DIGITIMES, Aug. 21, 2012, available at <http://www.digitimes.com/news/a20120820PD223.html>.

CLAIMS FOR RELIEF

FIRST CLAIM FOR RELIEF

Attempted Monopolization
(Section 2 of the Sherman Act, 15 U.S.C. § 2)
(Against E Ink)

75. Plaintiff incorporates by reference all previous paragraphs of this Complaint as if fully set forth here and further alleges:

76. E Ink and AUO agreed, combined, and conspired to attempt to acquire and maintain monopoly power in the market for electrophoretic display products. Pursuant to these agreements, accommodations, and conspiracy, E Ink attempted to acquire monopoly power and maintain it by acquiring, sublicensing, and cross-licensing CopyTele's and others' electrophoretic display technology patents. As a result, these agreements, combinations, and conspiracies had a dangerous probability of harming competition in the market for electrophoretic display products including eReaders.

77. CopyTele has suffered injury in its business or property as a result of E Ink's attempt to monopolize the electrophoretic display market because CopyTele has been deprived of developing, manufacturing, and licensing its EPD Technologies. Consumers will be harmed by the sale of E Ink's electrophoretic display products as there is no competition as a result of Defendants' agreements, accommodations, and conspiracy to monopolize the market for electrophoretic display products such as eReaders.

78. Defendants' violation of the antitrust laws and their supra-competitive prices will result in ill-gotten monopoly profits to E Ink.

79. As a result of E Ink's attempted monopolization, CopyTele is entitled to treble damages, according to proof, pre-judgment interest, injunctive relief, and attorneys' fees and costs.

SECOND CLAIM FOR RELIEF

Conspiracy to Monopolize
(Section 2 of the Sherman Act, 15 U.S.C. § 2)
(Against all Defendants)

80. Plaintiff incorporates by reference all previous paragraphs of this Complaint as if fully set forth here and further alternatively alleges:

1 81. An agreement or mutual understanding between E Ink and AUO existed to obtain
2 monopoly power in the market for electrophoretic displays and products incorporating
3 electrophoretic displays such as eReaders. E Ink and AUO knowingly, voluntarily, and
4 intentionally, became parties to that agreement or mutual understanding.

5 82. E Ink and AUO intended that they would obtain or maintain monopoly power in
6 the market for electrophoretic displays.

7 83. E Ink and AUO committed overt acts in furtherance of the conspiracy to
8 monopolize, including but not limited to AUO agreeing to sell SiPix, and E Ink agreeing to buy
9 SiPix, AUO defrauding and inducing CopyTele to license CopyTele's EPD Patents to AUO under
10 the guise of a joint product development arrangement, and AUO's clandestine sublicense of
11 CopyTele's EPD Patents to E Ink.

12 84. Defendants' activities occurred in or affected interstate and/or foreign commerce.

13 85. As a result of Defendants' conspiracy, their scheme had a dangerous probability of
14 harming competition in the market for electrophoretic displays. CopyTele has suffered injury in
15 its business or property as a result of E Ink's attempt to monopolize the electrophoretic display
16 market because CopyTele has been deprived of developing, manufacturing, and licensing its own
17 products utilizing its EPD Technologies. Consumers will be harmed by the sale of E Ink's
18 electrophoretic display products as there is no competition as a result of Defendants' agreements,
19 accommodations, and conspiracy to monopolize the market for electrophoretic displays.

20 86. CopyTele is entitled to treble damages, according to proof, pre-judgment interest,
21 injunctive relief, and attorneys' fees and costs.

22 **THIRD CLAIM FOR RELIEF**
23 **Breach Of Contract**
24 **(Against AUO)**

25 87. Plaintiff incorporates by reference all previous paragraphs of this Complaint as if
26 fully set forth here and further alleges:

27 88. CopyTele entered into the EPD Agreement and the nFED Agreement with AUO.

28 89. The "best efforts" clauses of both Agreements required AUO to employ diligent
efforts to jointly develop the nFED Products and EPD Products.

1 90. CopyTele performed its obligations under both Agreements—including employing
2 its “best efforts” to jointly develop products—to the extent possible in light of AUO’s active
3 impediments to progress on both joint development projects.

4 91. Cancellation of the nFED Agreement budget by AUO was both a breach of the
5 “best efforts” obligation agreed to by AUO, and a material breach of the nFED Agreement.

6 92. In reliance on AUO’s “best efforts” joint development obligations, CopyTele
7 incurred significant out-of-pocket expenses, and significant internal development costs, in
8 connection with the nFED Products. As a result of AUO’s breaches of the nFED Agreement,
9 CopyTele was also deprived of \$ [REDACTED] in development payments to be paid by AUO to
10 CopyTele, in addition to significant royalties to be paid by AUO to CopyTele in connection with
11 the sale of the nFED Products.

12 93. AUO’s 12 month delay in supplying test cells to CopyTele, and AUO’s refusal to
13 supply the necessary software code for the K1900 EPD timing controller, both constituted
14 breaches of AUO’s “best efforts” obligations, and were material breaches of the EPD Agreement.

15 94. Without the timely delivery of the test cells, AUO prevented CopyTele from
16 progressing in its scheduled development work. Without the software code, CopyTele was forced
17 to pay significant out of pocket costs for the development of its own software for testing
18 purposes. In addition, these actions prevented CopyTele from reaching the milestones for which
19 \$ [REDACTED] would have been paid by AUO to CopyTele. The milestone payments to be paid by
20 AUO to CopyTele, the expenses incurred by CopyTele in connection with the software which
21 was to be provided by AUO, and the significant royalties to be paid by AUO to CopyTele in
22 connection with the sale of the EPD Products, all represent damages incurred by CopyTele as a
23 result of AUO’s breaches of the EPD Agreement.

24 95. In addition, CopyTele granted sublicensing rights to AUO with the understanding
25 and intent that they would be used solely in connection with the manufacture, use, and sale of
26 jointly developed products. AUO’s use of the sublicenses to frustrate the purpose of the
27 Agreements by sublicensing the patents to E Ink was also a material breach of the EPD
28 Agreement. CopyTele has been damaged by AUO’s sublicensing of the EPD Patents to E Ink by,

1 *inter alia*, depriving CopyTele of the opportunity to develop EPD Products as contemplated under
2 the EPD Agreement.

3 96. AUO's sale of SiPix—AUO's primary electrophoretic display manufacturing
4 subsidiary—to E Ink was a both breach of the "best efforts" obligation agreed to by AUO, and a
5 material breach of the Agreement. CopyTele has been damaged by AUO's sale of SiPix to AUO,
6 *inter alia*, depriving CopyTele of the opportunity to develop competing EPD products as
7 contemplated under the EPD Agreement.

8 **FOURTH CLAIM FOR RELIEF**
9 **Breach Of The Implied Covenant Of Good Faith And Fair Dealing**
10 **(Against AUO)**

11 97. Plaintiff incorporates by reference all previous paragraphs of this Complaint as if
12 fully set forth here and further alleges:

13 98. California law implies a covenant of good faith and fair dealing in all contracts
14 between parties under California law.

15 99. AUO was, at all relevant times, obligated under an implied covenant of good faith
16 and fair dealing not to take actions that would deliberately frustrate the rights of CopyTele and
17 the purpose of the Agreements.

18 100. AUO breached the covenant of good faith and fair dealing implied in the
19 Agreements by denying CopyTele the benefit of its bargain by: (a) cancelling the budget for the
20 nFED Agreement joint development project; (b) failing to supply test cells and thereby inhibiting
21 CopyTele's ability to make progress on its EPD Product development work; (c) refusing to
22 supply the necessary software code for the K1900 EPD timing controller; and (d) selling its
23 electrophoretic display subsidiary to E Ink, thereby vitiating the parties' abilities to effectively
24 develop and market competing EPD Products. CopyTele has been damaged by these breaches.

25 **FIFTH CLAIM FOR RELIEF**
26 **Fraudulent Inducement**
27 **(Against AUO)**

28 101. Plaintiff incorporates by reference all previous paragraphs of this Complaint as if
fully set forth here and further alleges:

1 102. AUO fraudulently induced CopyTele to enter the Agreements by making
2 misrepresentations of fact and/or by making promises without any intention of performing them.
3 AUO led CopyTele to believe, through false representations, that AUO was committed to jointly
4 developing products under both Agreements when it had no intent of performing its contractual
5 obligations. These false representations include, without limitation: (1) the “best efforts” clauses
6 included in both multiple drafts and the final versions of the Agreements; (2) AUO’s repeated
7 written and oral statements that it intended to jointly develop royalty-bearing products with
8 CopyTele, including but not limited to:

9 i. During an August 12, 2010 meeting with CopyTele management, AUO
10 gave a presentation regarding AUO’s intent to work jointly with CopyTele to improve AUO’s
11 existing display technology.

12 ii. On September 24, 2010, C.W. Hao, AUO’s Marketing Director, emailed
13 Denis Krusos acknowledging AUO’s obligation to “co-work” with CopyTele to develop nFED
14 Products as an “assumption” and a “constraint” of the patent licensing agreement that the
15 companies were negotiating.

16 iii. During a November 30, 2010 meeting with CopyTele management, AUO
17 stated that CopyTele would be a source of research and development to AUO, not just a source of
18 licensing technology.

19 iv. During a December 1, 2010 meeting with CopyTele management, AUO
20 stated that AUO and CopyTele would work together as a team to prevent E Ink from infringing
21 on CopyTele’s patents, possibly through litigation.

22 v. On January 10, 2011, Hank M. Liu, Chief General Counsel at AUO stated
23 in an email to Denis Krusos that AUO intends to “invest a lot of resources in a joint development
24 project.”

25 vi. On March 3, 2011, Eric Lo, of AUO’s Strategic Business Development
26 office stated in an email to Anthony Campisi that AUO was seriously evaluating CopyTele’s
27 technology for its mass production potential.

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1 vii. During a meeting on November 29, 2010, CW Hao, AUO's Marketing
2 Director, stated that AUO could beat E Ink on manufacturing costs. Mr. Hao also stated that with
3 CopyTele's improved electrophoretic technology, the fruits of joint development program would
4 replace E Ink in the eReader market.

5 viii. Eric Lo, of AUO's Strategic Business Development office, claimed that
6 there was no way E Ink could compete with AUO on price with CopyTele's electrophoretic
7 technology, and that AUO and CopyTele could together accordingly replace E Ink as the provider
8 of electrophoretic displays to Amazon.

9 ix. At a meeting on February 19, 2011, Paul Peng, AUO's President, reported
10 that AUO's EPD Group was excited about the electrophoretic display wall structure that
11 CopyTele proposed for the joint development project.

12 103. Each of these statements was knowingly false when made. AUO made each of
13 these statements with intent to deceive or induce reliance on the part of CopyTele.

14 104. CopyTele justifiably relied on these statements by agreeing to enter into the
15 Agreements. CopyTele suffered damages as a result AUO's fraudulent statements, including, but
16 not limited to, lost royalties and fees due under the Agreements, as well as development expenses
17 incurred by CopyTele in performing its obligations under the Agreements.

18 105. AUO's fraud, concealment, misrepresentation, and unfulfilled promises, with the
19 intent to deceive, fraudulently induced CopyTele to enter into the EPD Agreement and nFED
20 Agreement. AUO suggested facts which were not true and positively asserted facts in a manner
21 that was not warranted by the information known at the time. AUO knew and suppressed the true
22 facts. As a result, CopyTele has been injured and has incurred significant damages. CopyTele is
23 therefore entitled to seek damages in an amount to be proven at trial, together with interest and
24 costs.

25 106. AUO's conduct was malicious, intentional, and outrageous and constituted willful
26 and wanton disregard for the rights of others. Such conduct was specifically directed at CopyTele
27 and as such warrants an award of punitive damages.

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SIXTH CLAIM FOR RELIEF
Unjust Enrichment
(Against AUO)

107. Plaintiff incorporates by reference all previous paragraphs of this Complaint as if fully set forth here and further alleges:

108. AUO fraudulently obtained sublicensing rights to CopyTele's EPD Patents under the false representation that AUO intended to jointly develop EPD Products in conjunction with CopyTele.

109. CopyTele is informed and believes and based thereon alleges that AUO used these sublicensing rights for its own financial and competitive benefit, by, *inter alia*, sublicensing the EPD Patents to E Ink.

110. CopyTele has never been compensated for the value of the EPD Patent sublicenses provided to E Ink.

111. AUO was unjustly enriched by sublicensing the EPD Patents to E Ink without providing any consideration or value to CopyTele in return for such sublicense.

SEVENTH CLAIM FOR RELIEF
Unfair Business Practices (Bus. & Prof. Code §§ 17200, *et seq.*)
(Against AUO and E Ink)

112. Plaintiff incorporates by reference all previous paragraphs of this Complaint as if fully set forth here and further alleges:

113. CopyTele is informed and believes and based thereon alleges that Defendants have engaged in unfair competition as defined by California Business and Professions Code sections 17200, *et seq.*, in that Defendants have used unfair, unlawful, and fraudulent business practices, including false representations, in violation of state and federal law in the manners alleged herein.

114. CopyTele is informed and believes and based thereon alleges that in addition to the practices described above, such practices include without limitation the use of fraud and concealment to misappropriate CopyTele's proprietary intellectual property for Defendants' use and benefit.

115. CopyTele is informed and believes and based thereon alleges that in doing the acts alleged above, Defendants acted with the intent to obtain property or money from CopyTele by

1 means of conduct that was unfair, fraudulent, illegal, or otherwise proscribed by Business and
2 Professions Code sections 17200, *et seq.*

3 116. As a direct and proximate result of Defendants' actions, CopyTele is entitled to
4 recover restitution and disgorgement of all money and property provided to Defendants by virtue
5 of their various acts of unfair competition and violations of Business and Professions Code
6 sections 17200, *et seq.*

7 117. CopyTele is further entitled to injunctive relief against Defendants to ensure that
8 they do not, directly or indirectly, commit further acts of unfair competition.

9 **EIGHTH CLAIM FOR RELIEF**

10 **Accounting
(Against AUO)**

11 118. Plaintiff incorporates by reference all previous paragraphs of this Complaint as if
12 fully set forth here and further alternatively alleges:

13 119. Under the EPD Agreement, Plaintiff is entitled to a fair and reasonable royalty in
14 exchange for the exclusive license to AUO, and a fair and reasonable portion of the consideration
15 received by AUO in connection with any and all sublicenses to the EPD Patents, including the
16 sublicense of the EPD Patents to E Ink.

17 120. On information and belief, AUO received valuable consideration from E Ink in
18 exchange for sublicenses to CopyTele's EPD Patents.

19 121. Plaintiff seeks an accounting of any consideration received by AUO from E Ink
20 and any other third parties, in connection with the sublicensing of CopyTele's EPD Patents.

21 122. CopyTele is entitled to an accounting of any consideration received by AUO
22 attributable to the sublicenses of the EPD Patents to E Ink and the calculation of royalties due and
23 owing in connection therewith. To date, AUO has failed to provide such an accounting.

24 123. The information sought as part of the accounting is complex and solely in the
25 possession of AUO.

26 124. CopyTele respectfully requests that the Court order AUO to account for any
27 consideration received by AUO attributable to the sublicenses of the EPD Patents to E Ink, the
28 calculation of royalties due and owing in connection therewith, and the payment of any royalties

1 that remain due and owing, together with prejudgment interest, and grant such other relief as may
2 be just and proper.

3 **NINTH CLAIM FOR RELIEF**
4 **Aiding And Abetting Fraudulent Inducement**
5 **(Against E Ink)**

6 125. Plaintiff incorporates by reference all previous paragraphs of this Complaint as if
7 fully set forth here and further alleges:

8 126. E Ink desired to obtain licenses to CopyTele's EPD Patents. On information and
9 belief, E Ink's Taiwanese predecessor, Prime View International, had approached CopyTele via
10 third parties, regarding potential licenses to or the acquisition of CopyTele's EPD Patents, but all
11 such inquiries were declined. E Ink's desire to obtain licenses to CopyTele's EPD Patents is
12 further demonstrated by the fact Barrett Comisky, one of the co-founders of E Ink, purchased one
13 of CopyTele's electrophoretic devices in December of 1999. At a subsequent trade show, an E
14 Ink employee acknowledged to CopyTele that E Ink had reverse-engineered CopyTele's device.

15 127. On information and belief, E Ink was aware of AUO's scheme to fraudulently
16 induce CopyTele into providing sublicensing rights to AUO through the false promises to honor
17 the joint development agreements.

18 128. On information and belief, E Ink was aware of AUO's scheme to fraudulently
19 induce CopyTele to enter into the EPD Agreement, and aided and abetted AUO's fraudulent
20 inducement by providing substantial support and incentive to AUO to commit fraud by offering
21 to purchase SiPix in exchange for, *inter alia*, sublicenses to CopyTele's EPD Patents obtained
22 through AUO's fraud.

23 129. CopyTele was damaged by E Ink's conduct.
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TENTH CLAIM FOR RELIEF
Civil Conspiracy
(Against AUO and E Ink)

130. Plaintiff incorporates by reference all previous paragraphs of this Complaint as if fully set forth here and further alleges:

131. On information and belief, E Ink was aware of AUO's scheme to fraudulently induce CopyTele into providing sublicensing rights to AUO through the false promises to honor the joint development agreements.

132. On information and belief, E Ink conspired with AUO in agreeing to cooperate with AUO's scheme to fraudulently induce CopyTele into providing sublicensing rights to AUO through the false promises to honor the joint development agreements, and intended that the fraud be committed.

133. Defendants knowingly agreed to engage, and did engage, in one or more overt acts in pursuit of the conspiracy as set forth with more particularity in this Complaint.

134. CopyTele has been damaged by the conspiracy and Defendants' actions in furtherance thereof.

ELEVENTH CLAIM FOR RELIEF
Contract Reformation
(Against AUO)

135. Plaintiff incorporates by reference all previous paragraphs of this Complaint as if fully set forth here and further alternatively alleges:

136. The primary purpose and intent of the sublicensing provisions of Section 2.2 the EPD Agreement was to allow AUO to sublicense the EPD Patents solely in connection with manufacture, use, and sale of jointly developed EPD Products.

137. It was never the purpose or intent of CopyTele to grant AUO sublicensing rights that extend to the right to sublicense the EPD Patents to competitors, such as E Ink.

138. To the extent contract provisions in the EPD Agreement purport to grant sublicensing rights beyond those to that may be used solely in connection with manufacture, use, and sale of jointly developed EPD Products, those provisions fail to reflect the meeting of the

1 minds of the parties to the agreement by virtue of unilateral mistake by CopyTele regarding the
2 nature and scope of the Section 2.2, and fraud or misrepresentation by AUO.

3 139. The EPD Agreement should be reformed to limit any sublicensing rights to those
4 that may be exercised by AUO solely in connection with manufacture, use, and sale of jointly
5 developed products.

6 **TWELFTH CLAIM FOR RELIEF**
7 **Negligent Misrepresentation**
8 **(Against AUO)**

9 140. Plaintiff incorporates by reference all previous paragraphs of this Complaint as if
10 fully set forth here and further alternatively alleges:

11 141. AUO induced CopyTele to enter the Agreements by making misrepresentations of
12 fact and/or by making promises without any reasonable grounds to believe them. AUO led
13 CopyTele to believe, through misrepresentations, that AUO was committed to jointly developing
14 products under both Agreements when AUO had no reasonable grounds to believe it would
15 perform its contractual obligations. These misrepresentations include, without limitation: (1) the
16 "best efforts" clauses included in both multiple drafts of the Agreements and the final versions;
17 (2) AUO's repeated written and oral statements that it intended to jointly develop royalty-bearing
18 products with CopyTele, including but not limited to those set forth in paragraph 102 above.

19 142. AUO's misrepresentations induced CopyTele to enter into the EPD Agreement
20 and the nFED Agreement. AUO suggested facts which were not true and positively asserted facts
21 in a manner that was not warranted by the information known at the time. AUO knew and
22 suppressed the true facts. As a result, CopyTele has been injured and has incurred damages.
23 Plaintiff is therefore entitled to seek damages in an amount to be proven at trial, together with
24 interest and costs.
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THIRTEENTH CLAIM FOR RELIEF
Declaratory Judgment
(Against AUO and E Ink)

143. Plaintiff incorporates by reference all previous paragraphs of this Complaint as if fully set forth here and further alleges:

144. By virtue of AUO's material breach of both Agreements and fraudulent inducement, CopyTele has the right to cancel, terminate and/or rescind both Agreements.

145. Plaintiff seeks a declaration that the EPD Agreement and the nFED Agreement have been duly cancelled, terminated and/or rescinded, and that AUO is no longer entitled to sublicensing rights, and that any purported sublicenses of the EPD Patents to E Ink and any other third parties are invalid.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment against Defendants, and each of them, as follows:

1. For judgment in favor of CopyTele against Defendants on all claims for relief;
2. For a declaration that the EPD Agreement and the nFED Agreement have been duly cancelled, terminated, and/or rescinded pursuant to California Civil Code. § 1689 et seq., and that AUO is no longer entitled to sublicensing rights, and that any purported sublicenses of the EPD Patents to E Ink and any other third parties are invalid.
3. For the damages CopyTele has sustained as a result of Defendants' breaches and fraud;
4. For an accounting to determine the amount of damages sustained by CopyTele as a result of Defendants' breaches and fraud;
5. For CopyTele's costs of suit and reasonable attorneys' fees incurred in bringing this action;
6. For treble, punitive and exemplary damages according to proof against all Defendants;
7. For injunctive relief;
8. For an award of prejudgment interest, costs, and disbursements; and

1 9. For such other and further relief as the Court deems equitable or appropriate under
2 the circumstances.

3
4 **JURY DEMAND**

5 Plaintiff CopyTele, Inc. hereby demands a Jury Trial on all issues so triable.

6
7 Dated: January 28, 2013

LIEFF, CABRASER, HEIMANN & BERNSTEIN, LLP

8 By: 

9 Eric B. Fastiff

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18 *Attorneys for Plaintiff CopyTele, Inc.*
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Exhibit A

CONFIDENTIAL

EXCLUSIVE LICENSE AGREEMENT

This Exclusive License Agreement ("Agreement"), dated and effective as of May 27th, 2011 ("Effective Date"), is made and entered into by and between CopyTele Inc., having its office at 900 Walt Whitman Road, Melville, New York 11747 ("Licensor"), on the one hand, and AU Optronics Corp. ("Licensee"), having its office at 1 Li-Hsin Road 2, Hsinchu Science Park, Hsinchu, Taiwan, on the other hand.

In consideration of the mutual covenants and obligations herein undertaken, Licensor and Licensee agree as follows:

Article I. Definitions

In this Agreement, the following terms shall have the respective meanings set forth below:

- 1.1 "EPD" means electrophoretic display.
- 1.2 "Licensed Technology" means know how, technical information, engineering data, specifications of materials and other information owned or controlled by Licensor and/or its Subsidiaries relating to EPD.
- 1.3 "Licensed Patents" means any and all patents and/or patent applications relating to the Licensed Technology and/or EPD filed by, issued or assigned to Licensor and/or its Subsidiaries anywhere in the world on or before the fifth anniversary date from the Effective Date as well as all divisionals, continuations, continuations-in-part, reissues and/or reexaminations filed in connection therewith. For the avoidance of doubt, Licensed Patents include without limitation the patents and patent applications attached hereto as Schedule A.
- 1.4 "Licensed Products" means Subject EPD Products and/or products which the Licensed Patents and/or Licensed Technology may be related to.
- 1.5 "Subject EPD Products" means electrophoretic displays comprising the technical features as set forth in Schedule B attached hereto.
- 1.6 "Subsidiaries" means any corporation, company, or other entity of which more than fifty percent (50%) of the outstanding shares or stock or ownership interest entitled to vote for the election of directors is owned or controlled by either party.

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directly or indirectly, during the term of this Agreement, but any such entity constitutes a Subsidiary only so long as such ownership or control exists.

Article 2. Grant of Exclusive License and Release

In consideration of the royalties agreed to be paid by Licensee to Licensor hereunder and other considerations, the parties agree that:

- 2.1 Licensor hereby grants to Licensee and its Subsidiaries an exclusive, perpetual, worldwide license under any and all Licensed Technology to make, have made, sell, offer for sale, use, import, export, lease and/or otherwise dispose of the Licensed Products. Licensee on behalf of itself and its Subsidiaries hereby accepts such license. Licensor retains a non-exclusive right to use the Licensed Technology and Licensed Products in a non-competitive manner, consistent with this Agreement.
- 2.2 Licensor hereby grants to Licensee and its Subsidiaries an exclusive, worldwide license under any and all Licensed Patents to make, have made, sell, offer for sale, use, import, export, lease and/or otherwise dispose of the Licensed Products, and also sub-license the Licensed Patents, during the term of the Agreement. Licensee on behalf of itself and its Subsidiaries hereby accepts such license. Licensor retains a non-exclusive right to use the Licensed Patents and Licensed Products in a non-competitive manner, consistent with this Agreement.
- 2.3 Licensor hereby releases and discharges Licensee and its Subsidiaries from any and all actions, causes of action, claims or demands whatsoever, in law or equity of any kind, under the Licensed Patents and the Licensed Technology for any products made, have made, used, imported, exported, sold, offer for sale, leased and/or otherwise disposed of prior to Effective Date, if any.

Article 3. Third Party Infringement

- 3.1 Licensee shall have the right at its discretion to commence, prosecute, compromise and settle any claim, action or proceeding for infringement (past or future), unfair competition, unauthorized use, misappropriation or violation of any of the Licensed Patents by any unlicensed third party within the territory where the Licensed Patents may be enforced ("Enforcement Proceeding"). Licensee may, at its discretion, commence, prosecute, compromise or settle any such claim, action or proceeding, as well as any claim, action or proceeding to defend any of the Licensed Patents. It is the intent and agreement of the Parties that this Agreement transfers to Licensee the full exclusive rights and all substantial rights

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in the Licensed Patents such that Licensee shall be able to bring an Enforcement Proceeding in its own name, and that no rights have been maintained by Licensor that would require Licensor to be a named party to any Enforcement Proceeding.

Article 4. Royalty Fees for Exclusive License

4.1 Licensee shall pay royalty fees to the Licensor as follows:

- (a) Initial Fee: Licensee shall pay to Licensor an amount as set forth in Schedule C attached hereto.
- (b) Conditional Fee: Licensee shall pay to Licensor an amount as set forth in Schedule D attached hereto upon fulfillment of the conditions as set forth in Schedule F attached hereto.
- (c) Conditional Running Royalty: **REDACTED**
REDACTED Licensee shall pay to Licensor a royalty for the sale of the Subject EPD Products by Licensee and/or its Subsidiaries as set forth in Schedule E attached hereto.

4.2 The foregoing specified payments shall be made in United States currency by wire transfer to the following account, pursuant to a bank transfer as follows:

Bank/Branch Name: **REDACTED**
Address: **REDACTED**

Swift Code: **REDACTED**
Account Name: **REDACTED**
Account Number: **REDACTED**

4.3 All taxes imposed as a result of the existence or performance of this Agreement shall be borne and paid by the Party required to do so by applicable law; provided, however, that, if so required by applicable law, Licensee shall withhold the amount of any national taxes levied by the Government of the Republic of China (Taiwan), on any payment by the Licensee hereunder, shall promptly pay such amount to the appropriate tax authorities of the Government of the Republic of China (Taiwan) and shall transmit to the Licensor official tax receipts or other evidence issued by such tax authorities.

CONFIDENTIAL

Article 5. Term

- 5.1 This Agreement shall become effective as of the Effective Date and shall remain in full force and effect until the last to expire of the Licensed Patents.

Article 6. Miscellaneous

- 6.1 The rights and obligations of the Parties under this Agreement shall be governed by and construed in accordance with laws of California. Any dispute in connection with this Agreement shall be submitted to the arbitration administered by the American Arbitration Association under its Commercial Arbitration Rules. The place of arbitration shall be San Francisco, California.
- 6.2 The terms and conditions of this Agreement may only be amended by a writing signed by the parties through their duly authorized representatives.
- 6.3 Except as otherwise specifically provided in this Agreement, neither this Agreement nor any rights hereunder nor any Licensed Patents may be assigned or otherwise transferred by any party, in whole or in part, whether voluntary or by operation of law, including by way of sale of assets, merger or consolidation, without the prior written consent of the other party, provided that Licensee may transfer its rights and obligations under this Agreement to a Subsidiary or affiliate without Licensor's consent. Any purported assignment without any such consent is void. In the event of any default in payments due Licensor under this agreement by said Subsidiaries or affiliates, Licensee shall be responsible for the payment of such amounts due Licensor. This Agreement will be binding upon and inure to the benefit of the Parties and their respective successors and permitted assigns, including the covenants granted herein.
- 6.4 Any notice required or permitted under this Agreement or required by law must be in writing and must be (i) delivered in person, (ii) sent by facsimile with a hard copy of such facsimile sent by (international or domestic) mail, or (iii) sent by overnight or next business day courier such as Federal Express, UPS or DHL, as follows:

- (1) If to Licensor:

CopyTele, Inc.
900 Walt Whitman Road
Melville, New York 11747

CONFIDENTIAL

Attn: Denis A. Krusos
Fax: 631-549-3813

(2) If to Licensee:

AU Optronics Corp.
1 Li-Hsin Road 2
Hsinchu Science Park
Hsinchu, Taiwan
Attn: Legal Office
Fax: REDACTED

Either party may amend its address by written notice to the other party in accordance with this Article. Notices will be deemed to have been given at the time of actual delivery in person on a business day, five (5) business days (seven (7) business days for international delivery) after deposit in the mail as set forth herein, or one (1) business day after delivery to an overnight courier service (4 business days for international delivery).

- 6.5 Except as expressly provided herein, the rights and remedies herein provided shall be cumulative and not exclusive of any other rights or remedies provided by law or otherwise. Failure by either party to detect, protest, or remedy any breach of this Agreement shall not constitute a waiver or impairment of any such term or condition, or the right of such party at any time to avail itself of such remedies as it may have for any breach or breaches of such term or condition. A waiver may only occur pursuant to the express written permission of an authorized officer of the party against whom the waiver is asserted.
- 6.6 In the event that any term, condition or provision of this Agreement is declared or found by a court of competent jurisdiction to be invalid, illegal, unenforceable or void, the parties shall endeavor in good faith to agree to amendments that will preserve, as far as possible, the intentions expressed in this Agreement. If the parties fail to agree on such amendments, such invalid term, condition or provision shall be severed from the remaining terms, conditions and provisions, which shall continue to be valid and enforceable to the fullest extent permitted by law.
- 6.7 This Agreement is the result of negotiations between Licensor and Licensee and accordingly shall not be construed for or against a party merely because such party drafted this Agreement or any portion thereof.

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- 6.8 Titles of the Articles herein are for the convenience of reference only and shall not affect the construction of this Agreement.
- 6.9 In the event of any legal action to enforce or interpret the terms of this Agreement, the prevailing party shall be entitled, in addition to its court costs, to its reasonable attorneys' fees, including without limitation, the costs, expenses and attorneys' fees on any appeal.
- 6.10 This Agreement sets forth the entire agreement and understanding between the parties with respect to the subject matter described herein and supersedes and cancels all previous negotiations, agreements and commitments, whether oral or in writing, with respect to the subject matter described herein.
- 6.11 Licensor agrees to make any maintenance fees for the Licensed Patents in a timely manner as they are due. Licensor agrees to take further reasonable actions as may be requested by Licensee from time to time during the term of this Agreement to effectuate the terms and conditions of this Agreement.
- 6.12 Licensor and Licensee will discuss and conclude a joint development agreement for the Subject EPD Products as soon as practicable after the Effective Date hereof and will make their best efforts to jointly develop the Subject EPD Products **REDACTED**
- 6.13 Licensor and Licensee agree to abide by the confidential obligations as set forth in Schedule G attached hereto.

IN WITNESS WHEREOF, this Agreement has been duly executed by the parties through their duly authorized representatives to be effective as of the Effective Date.

Licensor:

Licensee:

CopyTele Inc.

AU Optronics Corp.

By: *Denis A. Krusos*
Name: Denis A. Krusos
Title: Chairman and
Chief Executive Officer

By: **REDACTED**
Name: **REDACTED**
Title: **REDACTED**

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SCHEDULE A
CONFIDENTIAL

Non-Exhaustive List of Licensed Patents and Patent Applications

<u>Title</u>	<u>Serial No.</u>	<u>Filing Date</u>	<u>Patent No.</u>	<u>Patent Issue Date</u>
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<u>Title</u>	<u>Serial No.</u>	<u>Filing Date</u>	<u>Patent No.</u>	<u>Patent Issue Date</u>
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SCHEDULE A
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Non-Exhaustive List of Licensed Patents and Patent Applications

REDACTED

<u>Title</u>	<u>PA No.</u>	<u>PA Filing Date</u>	<u>Patent No.</u>	<u>Patent Pub Date</u>	<u>Countries</u>
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SCHEDULE A
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Non-Exhaustive List of Licensed Patents and Patent Applications

REDACTED

<u>Title</u>	<u>PA No.</u>	<u>PA Filing Date</u>	<u>Patent No.</u>	<u>Patent Pub Date</u>	<u>Countries</u>
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SCHEDULE A
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Non-Exhaustive List of Licensed Patents and Patent Applications

COPYTELE EPD PATENTS - EUROPE

<u>Title</u>	<u>PA No.</u>	<u>PA Filing Date</u>	<u>Patent No.</u>	<u>Patent Pub Date</u>	<u>Countries</u>
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SCHEDULE A
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Non-Exhaustive List of Licensed Patents and Patent Applications

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SCHEDULE A
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Non-Exhaustive List of Licensed Patents and Patent Applications

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<u>Title</u>	<u>PA No.</u>	<u>PA Filing Date</u>	<u>Patent No.</u>	<u>Patent Pub Date</u>
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**SCHEDULE B
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Definition of "Subject EPD Products"

REDACTED

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**SCHEDULE C
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Amount of the Initial Fee

Licensee shall pay to Licensor an Initial Fee of **REDACTED** no later than thirty (30) days from the Effective Date.

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SCHEDULE D
CONFIDENTIAL

Amount of the Conditional Fee

Licensee shall pay to Licensor a Conditional Fee of **REDACTED** no later than **REDACTED** from Licensor's receipt of a written confirmation jointly signed by Licensor and Licensee, which confirmation cannot be unreasonably withheld by Licensee, that the conditions set forth in Schedule F have been fulfilled.

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SCHEDULE E
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Amount of the Conditional Running Royalty

Licensr and Licensee shall discuss and agree on a reasonable running royalty for the sale of the Subject EPD Products by Licensee and/or its Subsidiaries that practice the Licensed Patents as issued on the basis of the following principles:

REDACTED

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**SCHEDULE F
CONFIDENTIAL**

Conditions for the Conditional Fee

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SCHEDULE G
CONFIDENTIAL

Confidential Obligations

(1) **DEFINITION.** The trade secrets and all information communicated by either of Licensor or Licensee (a "disclosing party") to the other (a "receiving party"), in oral, written or electronic form, which is confidential to the disclosing party and provides value to the disclosing party at least in part by virtue of its confidential status, and are marked with "Confidential" or similar legend (any information disclosed in oral shall be reduced into writing and marked with "Confidential" or similar legend within 60 days following the disclosure), shall be deemed Confidential Information pursuant to this Agreement. In addition, and without limitation, the terms and conditions of this Agreement shall be deemed Confidential Information.

(2) **MAINTENANCE OF CONFIDENTIALITY.** Each party, as a receiving party, agrees to engage in efforts to maintain Confidential Information of the disclosing party in confidence at least as stringent as the efforts that the receiving party engages in to protect its own confidential information, and in any event no less than commercially reasonable efforts. Without limiting the foregoing, the receiving party shall restrict access to the Confidential Information of the disclosing party, by electronic security measures in the case of electronic files, and by physical security measures in the case of hard copies, to those employees who have a need to know such Confidential Information and shall advise those employees of the restrictions of this Agreement prior to any such disclosure. The receiving party's obligations under this Schedule G will be effective for a term of five years from the Effective Date.

(3) **EXCEPTIONS.** As used in this Agreement, Confidential Information shall not include:

- (a) Information which is now available to the public or hereafter becomes available to the public without any violation of this Agreement;
- (b) Information disclosed in good faith to the receiving party by a third party legally entitled to disclose the same;
- (c) Information which is independently developed by the receiving party; and
- (c) Information is required to be disclosed to any government agency or any regulatory authority or a court of competent jurisdiction provided that the parties agree to use their best efforts to minimize the disclosure of such information or be subject to a protective order and shall consult with and assist the other party.

For the avoidance of doubt, Licensee and its Subsidiaries shall not be deemed in breach of this Agreement by virtue of making or selling any product which contains Confidential Information and/or Licensed Technology, whether or not such Confidential Information or Licensed Technology can be known by way of reverse engineering or otherwise.

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(4) PUBLIC DISCLOSURES. Notwithstanding the foregoing, each receiving party shall be allowed to disclose Confidential Information of the disclosing party to make any necessary announcement or reporting required by the U.S. Securities and Exchange Commission, any stock exchange, the NASDAQ Stock Market, the New York Stock Exchange, and/or the Taiwan stock exchange. However, the party making the disclosure shall use reasonable efforts to notify and consult with the other party in advance of the contents of the announcement or the reporting.

Exhibit B

CONFIDENTIAL

LICENSE AGREEMENT

This License Agreement ("Agreement"), dated and effective as of May 27th, 2011 ("Effective Date"), is made and entered into by and between CopyTele Inc., having its office at 900 Walt Whitman Road, Melville, New York 11747 ("Licensor"), on the one hand, and AU Optronics Corp. ("Licensee"), having its office at 1 Li-Hsin Road 2, Hsinchu Science Park, Hsinchu, Taiwan, on the other hand.

In consideration of the mutual covenants and obligations herein undertaken, Licensor and Licensee agree as follows:

Article 1. Definitions

In this Agreement, the following terms shall have the respective meanings set forth below:

- 1.1 "Licensed Technology" means know how, technical information, engineering data, specifications of materials and other information owned or controlled by Licensor and/or its Subsidiaries relating to nano display.
- 1.2 "Licensed Patents" means any and all patents and/or patent applications relating to the Licensed Technology and/or nano display filed by, issued or assigned to Licensor and/or its Subsidiaries anywhere in the world on or before the fifth anniversary date from the Effective Date as well as all divisionals, continuations, continuations-in-part, reissues and/or reexaminations filed in connection therewith. For the avoidance of doubt, Licensed Patents include without limitation the patents and patent applications attached hereto as Schedule A.
- 1.3 "Licensed Products" means Subject Nano Display Products and/or products which the Licensed Patents and/or Licensed Technology may be related to.
- 1.4 "Subject Nano Display Products" means field emission displays comprising the technical features as set forth in Schedule B attached hereto.
- 1.5 "Subsidiaries" means any corporation, company, or other entity of which more than fifty percent (50%) of the outstanding shares or stock or ownership interest entitled to vote for the election of directors is owned or controlled by either party, directly or indirectly, during the term of this Agreement, but any such entity constitutes a Subsidiary only so long as such ownership or control exists.

Article 2. Grant of License and Release

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In consideration of the royalties agreed to be paid by Licensee to Licensor hereunder and other considerations, the parties agree that:

- 2.1 Licensor hereby grants to Licensee and its Subsidiaries a non-exclusive, perpetual, worldwide license under any and all Licensed Technology to make, have made, sell, offer for sale, use, import, export, lease and/or otherwise dispose of the Licensed Products. Licensee on behalf of itself and its Subsidiaries hereby accepts such license.
- 2.2 Licensor hereby grants to Licensee and its Subsidiaries a non-exclusive, worldwide license under any and all Licensed Patents to make, have made, sell, offer for sale, use, import, export, lease and/or otherwise dispose of the Licensed Products during the term of this Agreement. Licensee on behalf of itself and its Subsidiaries hereby accepts such license.
- 2.3 Licensor hereby releases and discharges Licensee and its Subsidiaries from any and all actions, causes of action, claims or demands whatsoever, in law or equity of any kind, under the Licensed Patents and the Licensed Technology for any products made, have made, used, imported, exported, sold, offer for sale, leased and/or otherwise disposed of prior to Effective Date, if any.

Article 3. Royalty Fees for License

3.1 Licensee shall pay royalty fees to the Licensor as follows:

- (a) Initial Fee: Licensee shall pay to Licensor an amount as set forth in Schedule C attached hereto.
- (b) Conditional Fee: Licensee shall pay to Licensor an amount as set forth in Schedule D attached hereto upon fulfillment of the conditions as set forth in Schedule F and Schedule H, respectively, attached hereto.
- (c) Conditional Running Royalty: REDACTED
REDACTED, Licensee shall pay to Licensor a royalty for the sale of the Subject Nano Display Products by Licensee and/or its Subsidiaries as set forth in Schedule E attached hereto.

3.2 The foregoing specified payments shall be made in United States currency by wire transfer to the following account, pursuant to a bank transfer as follows:

Bank/Branch Name:
Address:

REDACTED

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Swift Code:
Account Name:
Account Number:

REDACTED

- 3.3 All taxes imposed as a result of the existence or performance of this Agreement shall be borne and paid by the Party required to do so by applicable law; provided, however, that, if so required by applicable law, Licensee shall withhold the amount of any national taxes levied by the Government of the Republic of China (Taiwan), on any payment by the Licensee hereunder, shall promptly pay such amount to the appropriate tax authorities of the Government of the Republic of China (Taiwan) and shall transmit to the Licensor official tax receipts or other evidence issued by such tax authorities.

Article 4. Term

- 4.1 This Agreement shall become effective as of the Effective Date and shall remain in full force and effect until REDACTED

Article 5. Miscellaneous

- 5.1 The rights and obligations of the Parties under this Agreement shall be governed by and construed in accordance with laws of California. Any dispute in connection with this Agreement shall be submitted to the arbitration administered by the American Arbitration Association under its Commercial Arbitration Rules. The place of arbitration shall be San Francisco, California.
- 5.2 The terms and conditions of this Agreement may only be amended by a writing signed by the parties through their duly authorized representatives.
- 5.3 Except as otherwise specifically provided in this Agreement, neither this Agreement nor any rights hereunder nor any Licensed Patents may be assigned or otherwise transferred by any party, in whole or in part, whether voluntary or by operation of law, including by way of sale of assets, merger or consolidation, without the prior written consent of the other party, provided that Licensee may transfer its rights and obligations under this Agreement to a Subsidiary or affiliate without Licensor's consent. Any purported assignment without any such consent is void. In the event of any default in payments due Licensor under this agreement by said Subsidiaries or affiliates, Licensee shall be responsible for the payment of such amounts due Licensor. This Agreement will be binding upon and inure to the benefit of the Parties and their respective successors and permitted assigns, including the covenants granted herein.

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- 5.4 Any notice required or permitted under this Agreement or required by law must be in writing and must be (i) delivered in person, (ii) sent by facsimile with a hard copy of such facsimile sent by (international or domestic) mail, or (iii) sent by overnight or next business day courier such as Federal Express, UPS or DHL, as follows:

(1) If to Licensor:

CopyTele, Inc.
900 Walt Whitman Road
Melville, New York 11747
Attn: Denis A. Krusos
Fax: 631-549-3813

(2) If to Licensee:

AU Optronics Corp.
1 Li-Hsin Road 2
Hsinchu Science Park
Hsinchu, Taiwan
Attn: Legal Office
Fax: REDACTED

Either party may amend its address by written notice to the other party in accordance with this Article. Notices will be deemed to have been given at the time of actual delivery in person on a business day, five (5) business days (seven (7) business days for international delivery) after deposit in the mail as set forth herein, or one (1) business day after delivery to an overnight courier service (4 business days for international delivery).

- 5.5 Except as expressly provided herein, the rights and remedies herein provided shall be cumulative and not exclusive of any other rights or remedies provided by law or otherwise. Failure by either party to detect, protest, or remedy any breach of this Agreement shall not constitute a waiver or impairment of any such term or condition, or the right of such party at any time to avail itself of such remedies as it may have for any breach or breaches of such term or condition. A waiver may only occur pursuant to the express written permission of an authorized officer of the party against whom the waiver is asserted.
- 5.6 In the event that any term, condition or provision of this Agreement is declared or found by a court of competent jurisdiction to be invalid, illegal, unenforceable or void, the parties shall endeavor in good faith to agree to amendments that will preserve, as far as possible, the intentions expressed in this Agreement. If the

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parties fail to agree on such amendments, such invalid term, condition or provision shall be severed from the remaining terms, conditions and provisions, which shall continue to be valid and enforceable to the fullest extent permitted by law.

- 5.7 This Agreement is the result of negotiations between Licensor and Licensee and accordingly shall not be construed for or against a party merely because such party drafted this Agreement or any portion thereof.
- 5.8 Titles of the Articles herein are for the convenience of reference only and shall not affect the construction of this Agreement.
- 5.9 In the event of any legal action to enforce or interpret the terms of this Agreement, the prevailing party shall be entitled, in addition to its court costs, to its reasonable attorneys' fees, including without limitation, the costs, expenses and attorneys' fees on any appeal.
- 5.10 This Agreement sets forth the entire agreement and understanding between the parties with respect to the subject matter described herein and supersedes and cancels all previous negotiations, agreements and commitments, whether oral or in writing, with respect to the subject matter described herein.
- 5.11 Licensor agrees to make any maintenance fees for the Licensed Patents in a timely manner as they are due. Licensor agrees to take further reasonable actions as may be requested by Licensee from time to time during the term of this Agreement to effectuate the terms and conditions of this Agreement.
- 5.12 Licensor and Licensee will discuss and conclude a joint development agreement for the Subject Nano Display Products as soon as practicable after the Effective Date hereof and will make their best efforts to jointly develop the Subject Nano Display Products [REDACTED]
[REDACTED]
- 5.13 Licensor and Licensee agree that the granting of any additional license(s) under the Licensed Patents by Licensor to any third party will be subject to the written consent of the Licensor, the Licensee, and Videocon Industries Limited of India under such reasonable conditions to be discussed by the said three parties, subject to any necessary antitrust approval, if any.
- 5.14 Licensor and Licensee agree to abide by the confidential obligations as set forth in Schedule G attached hereto.

CONFIDENTIAL

IN WITNESS WHEREOF, this Agreement has been duly executed by the parties through their duly authorized representatives to be effective as of the Effective Date.

Licensor:

Licensee:

CopyTele Inc.

AU Optronics Corp.

By: *Denis A. Krusos*

By: REDACTED

Name: Denis A. Krusos

Name: REDACTED

Title: Chairman and

Title: REDACTED

Chief Executive Officer

CONFIDENTIAL

**SCHEDULE A
CONFIDENTIAL**

Non-Exhaustive List of Licensed Patents and Patent Applications

<u>Title</u>	<u>Serial No.</u>	<u>Filing Date</u>	<u>Patent No.</u>	<u>Patent Issue Date</u>
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REDACTED

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REDACTED

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**SCHEDULE B
CONFIDENTIAL**

Definition of "Subject Nano Display Products"

REDACTED

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**SCHEDULE C
CONFIDENTIAL**

Amount of the Initial Fee

Licensor shall pay to Licensor an Initial Fee of US **REDACTED** no later than thirty (30) days from the Effective Date.

CONFIDENTIAL

SCHEDULE D
CONFIDENTIAL

Amount of the Conditional Fee

Licensee shall pay to Licensor a Conditional Fee of REDACTED no later than REDACTED REDACTED from Licensor's receipt of a written confirmation jointly signed by Licensor and Licensee, which confirmation cannot be unreasonably withheld by Licensee, that the conditions set forth in Schedule F have been fulfilled.

Licensee shall pay to Licensor a Conditional Fee of REDACTED no later than REDACTED REDACTED from Licensor's receipt of a written confirmation jointly signed by Licensor and Licensee, which confirmation cannot be unreasonably withheld by Licensee, that the conditions set forth in Schedule H have been fulfilled.

CONFIDENTIAL

SCHEDULE E
CONFIDENTIAL

Amount of the Conditional Running Royalty

Licensors and Licensees shall discuss and agree on a reasonable running royalty for the sale of the Subject Nano Display Products by Licensee and/or its Subsidiaries that practice the Licensed Patents as issued on the basis of the following principles:

REDACTED

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**SCHEDULE F
CONFIDENTIAL**

Conditions for the Conditional Fee

REDACTED

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**SCHEDULE G
CONFIDENTIAL**

Confidential Obligations

(1) **DEFINITION.** The trade secrets and all information communicated by either of Licensor or Licensee (a "disclosing party") to the other (a "receiving party"), in oral, written or electronic form, which is confidential to the disclosing party and provides value to the disclosing party at least in part by virtue of its confidential status, and are marked with "Confidential" or similar legend (any information disclosed in oral shall be reduced into writing and marked with "Confidential" or similar legend within 60 days following the disclosure), shall be deemed Confidential Information pursuant to this Agreement. In addition, and without limitation, the terms and conditions of this Agreement shall be deemed Confidential Information.

(2) **MAINTENANCE OF CONFIDENTIALITY.** Each party, as a receiving party, agrees to engage in efforts to maintain Confidential Information of the disclosing party in confidence at least as stringent as the efforts that the receiving party engages in to protect its own confidential information, and in any event no less than commercially reasonable efforts. Without limiting the foregoing, the receiving party shall restrict access to the Confidential Information of the disclosing party, by electronic security measures in the case of electronic files, and by physical security measures in the case of hard copies, to those employees who have a need to know such Confidential Information and shall advise those employees of the restrictions of this Agreement prior to any such disclosure. The receiving party's obligations under this Schedule G will be effective for a term of five years from the Effective Date.

(3) **EXCEPTIONS.** As used in this Agreement, Confidential Information shall not include:

- (a) Information which is now available to the public or hereafter becomes available to the public without any violation of this Agreement;
- (b) Information disclosed in good faith to the receiving party by a third party legally entitled to disclose the same;
- (c) Information which is independently developed by the receiving party; and
- (c) Information is required to be disclosed to any government agency or any regulatory authority or a court of competent jurisdiction provided that the parties agree to use their best efforts to minimize the disclosure of such information or be subject to a protective order and shall consult with and assist the other party.

For the avoidance of doubt, Licensee and its Subsidiaries shall not be deemed in breach of this Agreement by virtue of making or selling any product which contains Confidential Information and/or Licensed Technology, whether or not such Confidential Information or Licensed Technology can be known by way of reverse engineering or otherwise.

CONFIDENTIAL

(4) PUBLIC DISCLOSURES. Notwithstanding the foregoing, each receiving party shall be allowed to disclose Confidential Information of the disclosing party to make any necessary announcement or reporting required by the U.S. Securities and Exchange Commission, any stock exchange, the NASDAQ Stock Market, the New York Stock Exchange, and/or the Taiwan stock exchange. However, the party making the disclosure shall use reasonable efforts to notify and consult with the other party in advance of the contents of the announcement or the reporting.

CONFIDENTIAL

SCHEDULE H
CONFIDENTIAL

REDACTED

Exhibit C



Robert A. Berman
President and CEO

P: 631-533-2840

F: 631-549-5974

rberman@CopyTele.com

January 28, 2013

VIA Fax 886-3-563-2871 and Mail

AU Optronics Corp.
1 Li-Hsn Road 2
Hsinchu, Taiwan
Attn: Paul Lee, Sr. Legal Counsel

Dear Mr. Lee:

As you are aware, on October 5, 2012, CopyTele notified AUO Optronics Corp. ("AUO") of AUO's continuing material breaches of the Exclusive License Agreement dated May 27, 2011 (the "EPD Agreement"), and the License Agreement dated May 27, 2011 (the "Nano Agreement"), and CopyTele's intent to terminate the EPD Agreement and the Nano Agreement.

Since the October 5 notice, AUO has declined numerous requests to meet with CopyTele to discuss the pendency of EPD Agreement and the Nano Agreement, including the amicable resolution of all issues in dispute, and the potential cure of AUO's breaches of the agreements.

As a result of AUO's unwillingness to meet with CopyTele, and the continued material breaches of the EPD Agreement and the Nano Agreement by AUO, effective immediately, CopyTele hereby terminates the EPD Agreement and the Nano Agreement, in their entireties, including without limitation any and all rights, licenses, and sublicensing rights to the Licensed Technology and the Licensed Patents, as defined in the respective agreements. Additionally and in the alternative, CopyTele hereby demands the rescission of the EPD Agreement and the Nano Agreement. CopyTele offers to restore the consideration that CopyTele has received under those Agreements as set off against CopyTele's damages incurred as a result of AUO's conduct.

Thank you.

Sincerely,

A handwritten signature in black ink, appearing to read "RAB", is written over the word "Sincerely,". Below the signature, the name "Robert A. Berman" is printed in a small, black, sans-serif font.

Robert A. Berman